

#### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:

Dirk Neibauer et al.

Application No.: 09/218,761

Filed: December 22, 1998

For: TRANSMISSION

Confirmation No.: 2666

Art Unit: 3681

Examiner: Tisha D. Lewis

# PETITION PURSUANT TO 37 C.F.R. § 1.18(a) REQUESTING WITHDRAWAL OF NOTICE OF ABANDONMENT

MAIL STOP PETITION Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450

Dear Sir:

A Notice of Allowance in the above-identified case was mailed June 6, 2005 and, therefore, the issue and publication fees were due September 6, 2005.

The application was held abandoned in a notice mailed April 18, 2006, because of "[a]pplicant's failure to pay the required issue fee and publication fee ... within the statutory period of three months from the mailing date of the Notice of Allowance." A copy of the April 18, 2006 Notice of Abandonment is attached hereto as Exhibit A.

Because it can be, and by means of the attached exhibits is, proven that the issue and publication fees in the above-identified application were timely submitted in the prescribed manner by applicant's counsel, Darby & Darby, P.C. to the USPTO, favorable consideration of this petition pursuant to 37 CFR § 1.181(a) requesting withdrawal of the holding of abandonment herein is respectfully solicited, as is the prompt granting thereof.

Application No.: 09/218,761

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On September 1, 2005, Darby & Darby, P.C. check no. 9598 for \$1,400 to cover the issue and publication fees in this case was drawn; its issue fee transmittal form was stamped with an express mail certificate (for a packet to be sent to the USPTO bearing USPS label no. EV691012719 US), dated and signed; and, the return postcard was signed - all by Dwight B. Peck, a docketing clerk with the Darby firm. Copies of these documents are attached hereto as Exhibit B. A declaration by Dwight B. Peck verifying his personal execution of the duties involved is attached hereto as Exhibit E.

Further, following preparation of such documents, and in accordance with the Darby firm's docketing procedures, Mr. Peck personally placed into the USPS Express Mail packet EV691012719 US the original documents relating to the present application that are reproduced in the attached exhibits and listed them in the log book maintained by the firm for that purpose. See the attached copy of the September 1, 2005 page from that log attached hereto as Exhibit C.

Copies of USPS Express Mail label no. EV691012719US, and a May 9, 2006 USPS Track and Confirm report --- which shows that the packet bearing such label was actually received by the USPS, but it has no record of and can provide no details regarding, its delivery to the USPTO---, are attached hereto as Exhibit D.

Since applicants complied with all governing USPTO rules and regulations, the abandonment in this case arose through no part or error by any of them or their counsel, and the issue and publication fees -- after being duly and timely submitted to the USPTO -- have been acknowledged by the USPS to have been lost by it, it is respectfully submitted that the April 18, 2006 Notice of Abandonment should be withdrawn and the application should be returned to the issue path

Finally, along with Mr. Peck's verified statement in support of the present petition (Exhibit E), Darby & Darby, P.C. check #11844 for \$1,400 is enclosed to replace its check #9598 which, upon receipt of the April 18, 2006 Notice of Abandonment (Exhibit A), was put under a May 3, 2006 order to stop payment consonant with prudent business practice and the Darby firm's policies.

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The Commissioner is authorized to charge any deficiency, or credit any excess in, the accompanying fee to Deposit Account No. 04-0100.

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Dated: May 10, 2006

Respectfully submitted,

Walt Thomas Zielinsk

Registration No.: 18,902 DARBY & DARBY P.C.

P.O. Box 5257

New York, New York 10150-5257

(212) 527-7700

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Attorneys/Agents For Applicant

United States Patent and Trademark Office UNITED STATES DEPARTMENT OF COMM United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov APPLICATION NO. FILING DATE ATTORNEY DOCKET NO. CONFIRMATION NO. 09/218,761 12/22/1998 DIRK NEUBAUER 2338/OE966 2666 04/18/2006 EXAMINER HENRY STERNBERG LEWIS, TISHA D DARBY & DARBY **ART UNIT** PAPER NUMBER 805 THIRD AVENUE NEW YORK, NY 10022 3681 DATE MAILED: 04/18/2006 Docketed without file

Please find below and/or attached an Office communication concerning this application or proceeding.

Attorney

#### Notice of Abandonment

Application No. 09/218,761 Examiner **LEWIS** 

Applicant(s) **NEUBAUER** Art Unit

3681

| PTOL-1432 (Rev. 04-01)   | Notice of Abandonment   | Part of Paper No. 0   |
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| U.S. Patent and Trademark Office   | or requests to withdraw the holding of abandonment unde   | er 37 CFR 1.181, should be promptly filed to  |
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| 7. The reason(s) below:  |   |   |
| 6. The decision by the Board of Patent Apof the decision has expired and there a           | opeals and Interference rendered on and be are no allowed claims.   | ecause the period for seeking court review  |
| 5. The letter of express abandonment wh 1.34(a)) upon the filing of a continuing           | nich is signed by an attorney or agent (acting in a reapplication.  | epresentative capacity under 37 CFR   |
| 4. The letter of express abandonment whe the applicants.                                   | ich is signed by the attorney or agent of record, the   | e assignée of the entire interest, or all of  |
| (b) No corrected drawings have been i  | eceived.  |   |
| (a) Proposed corrected drawings were after the expiration of the period for                | received on (with a Certificate of Mailing or reply.  | Transmission dated), which is   |
| Allowability (PTO-37).   | ed drawings as required by, and within the three-mo   |   |
| (c) The issue fee and publication fee, i   | f applicable, has not been received.  |   |
|  | R 1.18 is \$ The publication fee, if required b   | oy 37 CFR 1.18(d), is \$  |
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| (a) The issue fee and publication fee), which is after the expiration Allowance (PTOL-85). | e, if applicable, was received on (with a Ce<br>n of the statutory period for payment of the issue fe   | ertificate of Mailing or Transmission dated<br>se (and publication fee) set in the Notice o |
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| (d) No reply has been received.  | ,   |   |
| (c) A reply was received on but final rejection. See 37 CFR 1.85(a                         | t it does not constitute a proper reply, or a bona fide<br>a) and 1.111. (See explanation in box 7 below).  | e attempt at a proper reply, to the non-  |
| (A proper reply under 37 CFR 1.11  | 3 to a final rejection consists only of: (1) a timely fil ce; (2) a timely filed Notice of Appeal (with appeal  | iled amendment which places the   |
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| This application is abandoned in view of:  |   |   |
| The MAILING DATE of this co  | ommunication appears on the cover sheet with  | the correspondence address  |



Return of this card properly stamped, will acknowledge receipt of: Transmittal of Issue Fee. Check No. 9598. For \$1400.00

Applicant

Dirk Neubauer

Serial No.

09/218,716

Filed: For

12/22/98 **GEARBOX** 

Attorney

Edward J. Ellis

File No.

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(PATENT)

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Dirk Neibauer et al.

Application No.: 09/218,761

Filed: December 22, 1998

For: TRANSMISSION

Confirmation No.: 2666

Art Unit: 3681

Examiner: Tisha D. Lewis

Attn: Assistant Deputy Commissioner for Patents

# VERIFIED STATEMENT IN SUPPORT OF PETITION PURSUANT TO 37 CFR § 1.181(a) REQUESTING WITHDRAWAL OF THE HOLDING OF ABANDONMENT

Sir:

Dwight B. Peck declares that:

- 1. I am over 21 years of age and I am a citizen of the United States.
- 2. I am docketing clerk for, and have for more than eight (8) years been employed by, Darby & Darby, P.C., 805 Third Avenue, New York, New York 10022, attorneys for the above-identified applicant.
- 3. I have read the accompanying Petition Pursuant 37 CFR § 1.181(a) Requesting Withdrawal Of The Holding Of Abandonment and all of the exhibits attached thereto and understand that this verified statement constitutes Exhibit E thereof.
- 4. I personally signed the stamped certificates of mailing that appear in such exhibits, made out the check reproduced in such exhibits; signed or initialed the return postcard that is

reproduced in such exhibits; placed such documents in a packet bearing USPS label no. EV691012719US; and, I oversaw the deposit of all of the original documents with the United States Postal Service (USPS), all on September 1, 2005, with sufficient postage as Express Mail.

5. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing therefrom.

Dwight B. Peck

May 10, 2006

DARBY & DARBY P.C. 805 Third Avenue New York, New York 10022 212-527-7700